IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Bail Appl..No. 7369 of 2007()

CRIME NO.749 OF 2007 OF KASARGODE POLICE STATION

: PETITIONER/ACCUSED

IBRAHIM, S/O ERMU,
PULIKKOOR, SIRIBAGILU,
KASARGODE.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7369 of 2007

Dated this the 10th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations in a crime registered under Sections 376, 417 and 307 I.P.C. The crux of the allegations is that the petitioner and the defacto complainant, who are distantly related to each other, were in love and there was an understanding that they shall marry each other. There are suggestions to the effect that their family members approved their relationship and the petitioner and the defacto complainant had sexual intercourse several times. On 02.11.07, the defacto complainant was found inside the well. There was a request to save her. The fire force officials had come. She was saved from the well and taken to a hospital. She was later discharged from the hospital. Significantly there was no allegation whatsoever at that stage that the defacto complainant was pushed into the well by the petitioner. Long later, a private complaint was filed. In that private complaint, it is seen alleged that there were sexual intercourses between the parties which amount to rape. It was further alleged that the defacto complainant was pushed into the

well by the petitioner on that eventful day on 2.11.07. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations now raised belatedly in a private complaint are all totally false and unsustainable. The defacto complainant evidently apprehends that proceedings may be initiated against her under Section 309 I.P.C for attempting to commit suicide by jumping into the well. She wants to save herself from that allegation. She therefore had made totally false allegations against the petitioner. The petitioner submits that while it is true that there was some affinity and love between the parties, it was not a case where the petitioner in any way defrauded the defacto complainant. For various reasons there was disagreement between the parties and the marriage did not take place. Merely because of that, all the prior intimacy and personal contacts cannot be dubbed as instances of rape. The defacto complainant or the alleged witnesses who have now come forth to support the defacto complainant had never promptly raised any allegations that the defacto complainant was pushed into the well

by the petitioner. Belated allegations are raised in a private complaint with a transparent intention to avoid blame for the defacto complainant for the attempt to commit suicide by the defacto complainant. The petitioner does not deserve to endure the trauma of arrest and incarceration. He may be granted anticipatory bail, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor does not oppose the application for anticipatory bail and I am satisfied in the facts and circumstances of this case that the petitioner is entitled for grant of anticipatory bail.

4. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 17.12.2007. He shall be enlarged on regular bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 5 p.m on 18.12.2007 and 19.12.2007. During this period, the

petitioner can be interrogated in custody and all steps necessary for the conduct of a proper investigation including the conduct of the potency test can be carried out. Thereafter the petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 17.12.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 17.12.07.

(R.BASANT, JUDGE)

rtr/-